



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,830	12/01/2003	Carlos Augusto	100691.0001US1	3590

34284 7590 06/29/2005

ROBERT D. FISH
RUTAN & TUCKER LLP
611 ANTON BLVD 14TH FLOOR
COSTA MESA, CA 92626-1931

EXAMINER

MUNSON, GENE M

ART UNIT	PAPER NUMBER
----------	--------------

2811

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. <u>10/725,830</u>	Applicant(s) <u>C. AUGUSTO</u>	
	Examiner <u>G. MUNSON</u>	Art Unit <u>2811</u>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8 April 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-21 is/are allowed.
- 6) ☒ Claim(s) 1-3, 11-21 is/are rejected.
- 7) ☒ Claim(s) 9, 10 is/are objected to.
- 8) ☐ Claim(s) 1-21 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 8 April 2005 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. 10/725,830.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>8 April 2005</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8 April 2005</u> | 6) <input type="checkbox"/> Other: <u>None</u> |

Art Unit: 2811

Claim "21" is misprinted as "20."

Claims 17 and 18 are rejected under 35 USC 112, first paragraph. In claim 17, the 'memory cell' circuit is not clearly described in the specification (page 41) and no circuit diagram is provided to enable any person skilled in the art to make the circuit with the device of claim 16. In claim 18, the "inverter" circuit as disclosed does not have a "single" source.

Claim 15 is rejected under 35 USC 112, second paragraph. The claim omits "insulator" after "gate".

Claims 1-8, 11-14, 16, 17 and 19-21 are rejected as double patenting of the non-statutory type over claims of the Augusto patent 6,674,099 which issued from parent application SN 09/889,815. Claims 1-8, 11-14, and 19-21 read on the MISFET of the parent claims and would be double patenting. See MPEP 804. It would have been obvious to use the MISFET of the patent claims in known circuits (claims 16, 17). No timely filed terminal disclaimer has been received.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2811

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 USC 102 as unpatentable as shown by Welch '584.

See Figure 4, which has "sufficiently symmetric paths" as claimed; column 21, line 6, to column 23, line 8.

Claims 16 and 17 are rejected under 35 USC 103 as unpatentable over Welch '584, as in the above rejection. Germanium is a conventional semiconductor, as applicant would agree (37 CFR 1.56, MPEP 2144.03), which would have been obvious to use to achieve a semiconductor with high mobility.

Claims 1 and 2 are rejected under 35 USC 102 as unpatentable as shown by Welch '636. See Figures 5, 7b, which have "sufficiently symmetric paths" as claimed; column 5, line 4, to column 6, line 19; column 13, line 30, to column 14, line 46; column 25, line 23, to column 26, line 48; column 27, lines 23-55; column 32, lines 53-62.

Claims 16 and 17 are rejected under 35 USC 103 as unpatentable over Welch '636, as in the above rejection. Germanium is a conventional semiconductor, as applicant would agree (37 CFR 1.56, MPEP 2144.03), which would have been obvious to use to achieve a semiconductor with high mobility.

The arguments in the response, filed 8 April 2005, have been considered but are not wholly persuasive, as noted above.

Claims 9 and 10 are objected to as dependent upon rejected claims but would be allowable over the art of record if each were put in completed form as independent claims including all limitations of claims 1, 9; 1, 10.

Art Unit: 2811

This action is **FINAL**.

This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed. The Notice of Appeal must be accompanied by the required appeal fee of appropriate amount.

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims or complies with a formal requirement made earlier. Amendments touching the merits of the application which otherwise might not be proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing, whichever is longer, of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

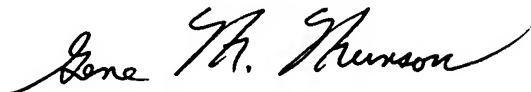
Art Unit: 2811

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTH from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Munson
(571) 272-1659

6/24/05



**GENE M. MUNSON
EXAMINER
GROUP ART UNIT 2811**